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9 CHURCH OF SCIENTOLOGY INTERNATIONAL

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12

13 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California not-for-profit)
14 religious corporation,)
15 Plaintiff,)
16 vs.)
17 GERALD ARMSTRONG, et al.,)
18 Defendants.)
19

20 AND RELATED CROSS-ACTIONS
21

) CASE NO. 157 680
) [CONSOLIDATED]
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) PLAINTIFF/CROSS-DEFENDANT'S
) RENEWAL MOTION FOR
) SUMMARY JUDGMENT OF
) DEFENDANT GERALD
) ARMSTRONG'S CROSS-
) COMPLAINT
) Date: March 8, 1996
) Time: 9:00 a.m.
) Dept: 1
) Trial Date: Vacated

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I. INTRODUCTION

Plaintiff/Cross-Defendant Church of Scientology International ("CSI") hereby renews its motion for summary judgment on defendant/cross-complainant Gerald Armstrong's first cause of action. That cause of action -- the only surviving claim in this case¹ -- seeks a declaratory judgment that various provisions of a 1986 Settlement Agreement between CSI and Armstrong are unenforceable because they were "designed to suppress evidence and obstruct justice." Since CSI's claims have all been adjudicated,² the instant motion, if granted, will terminate this action.

II. PROCEDURAL HISTORY

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A. The Prior Motion

On October 26, 1995, CSI moved for summary adjudication of Armstrong's first cross-claim, which seeks a declaration that paragraphs 4A, 4B, 7D, 7G, 7H, 7I, 10, 18D, and 18E of a 1986 Settlement Agreement are unenforceable. CSI's previous motion argued that the Court had already upheld the validity and enforceability of each of the specified paragraphs in the course of adjudicating previous summary adjudication motion. In an order dated December 1, 1995, this Court agreed that the prior summary adjudications had upheld the validity of all but two paragraphs of the 1986 Settlement Agreement but declined to make the same ruling regarding paragraphs 7I and 18E. Thus, the Court held it was compelled to deny CSI's previous summary adjudication motion as to those paragraphs.

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B. The Instant Motion

This motion renews CSI's motion -- and since only this claim survives, it is a motion for summary judgment. CSI relies upon this Court's December 1, 1995 order, which is law

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¹ Armstrong's second and third causes of action already were summarily dismissed by the Los Angeles Superior Court before this case was transferred to this Court.

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² On December 1, 1995, this Court severed CSI's fraudulent conveyance action against Armstrong and stayed it pending Armstrong's bankruptcy proceedings. The Court also dismissed, at CSI's request, those claims of CSI which had not previously been adjudicated, and entered final judgment in favor of CSI on the previously adjudicated claims of CSI's Second Amended Complaint.

1 of the case, that paragraphs 4A, 4B, 7D, 7G, 7H, 10 and 18D are valid and enforceable
2 provisions, as previously determined in earlier summary adjudication orders. CSI is entitled
3 to a judgment as a matter of law as to paragraphs 7I and 18E because: (1) no actual
4 controversy exists relating to the legal rights and duties of the parties with respect to these
5 two paragraphs, and (2) the paragraphs are valid and enforceable provisions and are not in
6 any sense "designed to suppress evidence and obstruct justice."

7 Renewal of this motion is authorized by Code of Civil Procedure §1008(b), which
8 provides that a subsequent application for an order which was refused in whole or in part
9 may be made if based upon "new or *different* facts, circumstances or law." (emphasis
10 added). The purpose of the statute is to make clear that trial courts may, and indeed, should
11 "review, reweigh, and modify an order when new facts [or circumstances] are presented
12 which demonstrate the need to do so ... [to avoid] needlessly burden[ing] the courts and the
13 litigants with plenary trials that were otherwise capable of summary resolution." *Graham v.*
14 *Hansen* (1982), 128 Cal.App.3d 965, 971, 180 Cal.Rptr. 604, 608; *see De La Pena v. Wolfe*
15 (1986) 177 Cal.App.3d 481, 485, 223 Cal.Rptr. 325, 328 (upholding a trial court's order
16 granting a renewed summary judgment motion "based on recently published case law.")

17 This renewed motion fits squarely within the language and spirit of CCP §1008(b) and
18 its appellate interpretations. It is based on different circumstances, facts and law from the
19 earlier motion. The prior motion was based exclusively on CSI's position that the law of the
20 case required the dismissal of Armstrong's remaining cross-claim. In an effort to simplify
21 the issues before the Court, CSI did not independently argue that the relevant paragraphs of
22 the 1986 Settlement Agreement were enforceable and valid. This Court agreed with CSI's
23 position, except with respect to two minor, virtually boilerplate, paragraphs of the
24 Agreement, which the Court held had not previously been addressed in earlier summary
25 adjudication orders. In so holding, this Court implicitly invited CSI to show that
26 Armstrong's claim with respect to those two paragraphs was also defective. By this motion,
27 CSI has now done that. This motion is based on the alternative grounds that no case or
28 controversy exists with respect to paragraphs 7I or 18E, and that those provisions, in any

1 event, are valid and enforceable. If this Court agrees, the Court and the parties will not
2 "needlessly [be] burden[ed] ... with [a] plenary trial ... otherwise capable of summary
3 adjudication." *Graham v. Hansen*, 128 Cal.App.3d at 971, 180 Cal.Rptr. at 608.³

4 **III. ARMSTRONG IS NOT ENTITLED TO THE RELIEF HE SEEKS.**

5 **A. There Is No Actual Or Justiciable Controversy Warranting**
6 **Declaratory Relief.**

7 To maintain an action for declaratory relief, a claimant such as Armstrong must do
8 more than simply allege that he and the defendant disagree about the terms of a contract.
9 Such an action must be predicated on a real, not a theoretical, controversy. Indeed:

10 [T]he standard for the granting of declaratory relief which is in the
11 nature of ripeness and standing is well established. *The controversy must be*
12 *"one which admits of definitive and conclusive relief by judgment within the*
field of judicial administration, as distinguished from an advisory opinion upon
a particular or hypothetical state of facts. The judgment must decree, not
suggest, what the parties may or may not do.

13 *Sherwyn & Handel v. California State Department of Social Services* (1985) 173 Cal.App.3d
14 52, 57, 218 Cal.Rptr. 778, 782, quoting *Selby Realty Co. v. City of Santa Buenaventura*
15 (1973) 10 Cal.3d, 110, 117 (emphasis supplied).

16 Parties are not entitled to ask a court to interpret a contractual clause for them, when
17 no actual controversy exists as to the meaning or validity of the provision. In *Pittenger v.*
18 *Home Savings & Loan Assn.* (1958) 166 Cal.Ap..2d 32, for example, plaintiff filed a
19 declaratory relief action against defendant Home Savings alleging an actual controversy
20 relating to the parties' respective legal rights and duties under the provisions of a deed of
21 trust. Home Savings claimed it had an unrestricted right to select the insurer and form of
22 policy and to reject any other while plaintiff claimed it had no such right to reject a policy
23 without good cause and upon reasonable grounds. Subsequent to the filing of the original
24 complaint Home Savings sold and transferred the note and deed of trust to defendant Western
25 Mortgage Corporation ("Western"), which thereafter accepted the insurance coverage

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27 ³ CSI has met the procedural requirements of CCP §1008(b) by accompanying this motion with
28 the affidavits of Andrew Wilson and Laurie Bartilson, containing the specified information
required by the statute.

1 proffered by plaintiff. The appellate court affirmed the judgment, finding the action was
2 moot and presented no actual or justiciable controversy. Quoting from *Merkley v. Merkley*
3 (1939) 12 Cal.2d 543, 547, the court held:

4 The situation has not developed which would require a construction of
5 any instrument introduced in evidence and relied on by plaintiff. *There is no*
6 *more than a conjecture or supposition on [plaintiff's] part that at some time in*
7 *the future a controversy may arise wherein [plaintiff] might become interested*
8 *in having adjudicated the [defendant's] interest under those documents.* The
9 facts in the record present an academic question only. The courts will not
10 exercise the discretionary power to declare rights which do not give rise to a
11 present controversy.

12 *Pittenger, supra*, 166 Cal.App.2d at 37 (emphasis supplied).⁴

13 The italicized rule of law both controls and dooms Armstrong's declaratory relief
14 cross-claim. Paragraphs 7I and 18E are broad, generalized provisions aimed at achieving
15 two laudable goals which are common to any settlement: a conclusive ending to the
16 controversy giving rise to the settlement [¶ 7I], and a covenant of good faith and fair dealing
17 [¶ 18E]. During the course of this protracted litigation concerning the enforcement of the
18 Settlement Agreement, neither has been at issue between the parties or even in dispute.⁵
19 Not only is there not a justiciable controversy at this time over these paragraphs, it appears
20 there never will be. [Wilson Decl., ¶ 13 and Bartilson Dec. ¶ 3] Armstrong's question as
21 to their meaning thus presents the Court with an "academic question" which is not properly
22 the subject of a declaratory relief action.

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24 ⁴ The appellate court in *Pittenger* also rejected plaintiff's argument that defendants acted in bad
25 faith due to the fact that the sale was merely a maneuver to end the controversy between the
26 parties, indicating that the exercise of a clear legal right cannot be impeached by evidence that
27 it was prompted by a sly motive. *Id.* at 38. In addition, the court refused to declare the rights
28 of lenders and borrowers with respect to the force and effect of insurance clauses such as the
one in question.

25 ⁵ As this Court is aware, Armstrong has introduced thousands of pages of evidence which
26 had its origins in the earlier litigation. The Church, however, has not raised this contractual
27 point as a bar to that "evidence." Moreover, Armstrong's cross-complaints in these consolidated
28 actions have included pages of allegations concerning events which allegedly occurred prior to
the signing of the Settlement Agreement. These claims were dismissed by this Court and the
Los Angeles Court as time-barred. [Bartilson Dec. ¶ 5]

1 **1. There Is No Present Controversy As To Paragraph 7I**

2 Paragraph 7I prohibits Armstrong from relitigating issues settled in 1986 in future
3 litigation between the Church or any contractual beneficiary and Armstrong. The only
4 actions pending between the parties are the present one and an adversary proceeding filed by
5 the Church in Armstrong's bankruptcy. [Wilson Decl. at ¶ 13; Bartilson Decl. at ¶ 3] In
6 both actions, the Church has never sought to enforce Paragraph 7I nor has it sought to
7 recover damages because Armstrong breached it. At this juncture the most that Armstrong
8 can claim is that sometime in the future he might desire an adjudication of his rights pursuant
9 to Paragraph 7I if the Church seeks to enforce that provision. However, that event is
10 unlikely to occur [Wilson Decl. at ¶13; Bartilson Decl. at ¶ 3], and that is precisely an
11 advisory opinion to which Armstrong is not entitled.

12 *State of California v. Superior Court* (1974) 12 Cal.3d 237 is applicable to this
13 circumstance. There, among other things, the plaintiff developers sought a judicial
14 resolution by means of declaratory relief that they had a "vested right" to develop their lands
15 without a permit. The Supreme Court held that they were not entitled to declaratory relief
16 on that issue because they had not sought a vested rights determination from the commission
17 issuing permits nor had they been denied such a determination and accordingly there was no
18 "actual controversy." Id. at 249.

19 Similarly, the Church has not attempted to enforce Paragraph 7I, and for that reason
20 there is no need to determine its enforceability. The alleged controversy is not ripe, does not
21 present a justiciable controversy, and must be dismissed. *Sherwyn & Handel v. California*
22 *State Department of Social Services, supra*, 173 Cal.App.3d at 58.

23 **2. There Is No Present Controversy As To Paragraph 18E**

24 As was the case with Paragraph 7I, the Church has never specifically attempted to
25 enforce Paragraph 18E in any litigation with Armstrong since the execution of the Settlement
26 Agreement. Wilson Decl. at ¶ 13; Bartilson Decl. at ¶ 3. Not only is the adjudication of
27 this paragraph not ripe, it would be a waste of judicial resources to require a judicial
28 determination on a contractual provision that is essentially surplusage [See Part IV. B(2),

1 *infra*]. For these reasons, the Church is entitled to summary judgment on Armstrong's
2 cross-complaint for declaratory relief, declaring that Armstrong is not entitled to any of the
3 relief sought.

4 **B. Armstrong is Not Entitled to a Declaration Invalidating the Remaining**
5 **Paragraphs As a Matter of Law**

6 Even if the Court decides that Armstrong's request for declaratory relief does present
7 an actual controversy, the Church is still entitled to summary judgment in its favor. No trial
8 is necessary to determine that the Paragraphs 7I and 18E are valid and enforceable, or that
9 they do not obstruct justice or suppress evidence as a matter of law.

10 A motion for summary judgment "shall be granted if all the papers submitted show
11 that there is no triable issue as to any material fact and that the moving party is entitled to a
12 judgment as a matter of law." Code Civ. Proc. § 437c(c).

13 Indeed, courts have found that summary judgment can be particularly appropriate in
14 deciding contractual disputes. "Where there is no conflict as to the terms of a contract, and
15 where its provisions are not uncertain or ambiguous, its 'meaning and effect * * * and the
16 relation of the parties to it thereby created * * * become a question of law to be decided by
17 the court.'" *Nizuk v. Georges* (1960) 180 Cal.App.2d 699, 705, 4 Cal.Rptr. 565, 570
18 (citations omitted) (Liability under written employment contract properly decided on motion
19 for summary judgment). Here, there is no dispute as to the terms of the Settlement
20 Agreement, and the Remaining Paragraphs which Armstrong has placed at issue are not
21 uncertain or ambiguous. The "meaning and effect" of these paragraphs and "the relation of
22 the parties to [them]" are now "a question of law to be decided by the court." *Id.* at 705.

23 **1. Paragraph 7I Is Valid And Enforceable**

24 Paragraph 7I of the Settlement Agreement states:

25 The parties hereto agree that in the event of any future litigation
26 between Plaintiff and any of the organizations, individuals or entities listed in
27 Paragraph 1 above, that any past action or activity, either alleged in this
28 lawsuit or activity similar in fact to the evidence that was developed during the
course this lawsuit, will not be used by either party against the other in any
future litigation. In other words, the "slate" is wiped clean concerning past
actions by any party.

1 This provision of the contract does not "suppress evidence" or "obstruct justice." At
2 most, it constitutes a more specific expression of the parties' intent, manifested in paragraphs
3 4, 5, and 6,⁶ to mutually release one another for damages relating to any claims then
4 pending, or injuries known or unknown at the time of the execution of the Settlement
5 Agreement. The import of this paragraph is simply that, in the event the parties were to
6 litigate other matters against one another in the future, they would not re-visit the evidence
7 and issues being resolved in 1986 by the Settlement Agreement.

8 Indeed, the public policy of this State is to permit controverted legal matters to reach
9 a conclusion, and to remain concluded. *See, e.g., Ricard v. Grobstein, Goldman, Stevenson,*
10 *Siegel, Levine & Mangel*, (1992) 6 Cal.App. 157, 162, 8 Cal.Rptr. 139. The doctrines of
11 *res judicata* and collateral estoppel, for example, prevent a party from relitigating matters
12 which have previously been determined in court. Here, the parties reached an amiable
13 resolution to their controversy. As part of that resolution, they agreed not to relitigate in any
14 future controversy the facts and evidence which they had litigated prior to 1986. Such an
15 agreement does not, as a matter of law, suppress evidence or obstruct justice, and, this Court
16 should so find.

17 Moreover, nothing contained in this paragraph could reasonably be interpreted to
18 violate Armstrong's First Amendment rights. This Court has already determined that
19 Armstrong entered into the Agreement freely and accepted fully its benefits. It is well-
20 established that Armstrong could -- and did -- contract for a restriction of his First
21 Amendment rights as part of the Agreement. *ITT Telecom Products v. Dooley* (1989) 214
22 Cal.App.3d 307, 319.

23 No party has a First Amendment right to continue to litigate matters after they have
24 been decided, or to introduce untimely and irrelevant evidence into a later controversy.
25 Those are the only actions of Armstrong which are reasonably restricted by Paragraph 7I.

26 Under the circumstances, should the Court determine that the matter is ripe for
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28 ⁶ See Sep.St. No. 8.

1 adjudication, the Church is entitled to judgment as a matter of law declaring that Paragraph
2 7I is valid and enforceable.

3 **2. Paragraph 18E Is Valid And Enforceable**

4 Paragraph 18E of the Settlement Agreement states:

5 The parties further agree to forbear and refrain from doing any act or
6 exercising any right, whether existing now or in the future, which act or
exercise is inconsistent with this Agreement.

7 The Settlement Agreement imposed obligations on both parties reaching into the
8 future: the Church agreed to pay Armstrong's attorney a settlement amount [Para. 3]; both
9 sides agreed to take certain actions or refrain from taking action, concerning a pending
10 appeal [Para. 4(B)]; Armstrong agreed to dismiss certain pending claims [Para. 4(A)]; and
11 non-disclosure provisions prevented both sides from discussing the terms of the settlement
12 [Para. 18(D)] and Armstrong from discussing Scientology [Paras. 7(D), 7(G), 7(H) and 10.]
13 With all of these actions scheduled to occur after the signing of the Settlement Agreement, it
14 was necessary for the parties to agree to cooperate to ensure that the benefits of the
15 Settlement Agreement were achieved in full by both sides.

16 In short, Paragraph 18E is just an express statement of the covenant of good faith and
17 fair-dealing which is implied in any contract entered into in California. It is well-established
18 that,

19 "There is implied in every contract a covenant by each party not to do
20 anything which will deprive the other parties thereto of the benefits of the
21 contract. . . . [T]his covenant not only imposes upon each contracting party the
22 duty to refrain from doing anything which would render performance of the
contract impossible by any act of his own, but also the duty to do everything
that the contract presupposes that he will do to accomplish its purpose."

23 Witkin, *Summary of California Law* (1987), Vol. 1, Contracts, §743 p. 674, quoting *Harm*
24 *v. Frasher* (1960) 181 Cal.App.2d 405, 417, and cases cited.

25 Paragraph 18E thus imposes no obligation on either party that is not already implied
26 into the Settlement Agreement pursuant to California law. When obligations under a contract
27 persist into the future, the parties have a continuing duty to refrain from taking any action
28 which will deprive the other party of the benefits of their bargain. The precise terms of

1 Paragraph 18E command and obligate no more than this, and certainly require no conduct
2 which either "suppresses evidence" or "obstructs justice."

3 CSI is thus entitled to judgment declaring that Paragraph 18E is also valid and
4 enforceable as a matter of law.

5 IV. CONCLUSION

6 In the interests of judicial economy, cross-defendant Church of Scientology
7 International respectfully requests that this Court enter final judgment in its favor by granting
8 this motion for summary judgment of Armstrong's Verified Amended Cross-Complaint.

9 Dated: January __, 1996

Respectfully Submitted,

10 Laurie J. Bartilson
11 MOXON & BARTILSON

12 WILSON, RYAN & CAMPILONGO

13
14 By: 

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